

ORIGINAL

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**VIA MESSENGER**

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

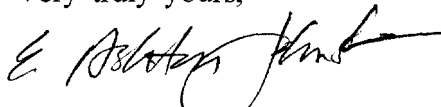
Re: Notice of Ex Parte Contact  
WT Docket No. 97-82

Dear Mr. Caton:

On April 30, 1997, Carl Northrop and I, representing the Coalition of Institutional Investors (the "Coalition"), and James F. Wade, a principal of Media/Communications Partners, one of the Coalition members, met with Mark Bollinger, Jerome A. Fowlkes, Kathleen O'Brian Ham, D'wana Speight, and Josh Rowland of the Commission's Auctions Division to discuss issues under consideration in the above-referenced docket. A copy of the attached materials was provided to the attendees at the meeting.

Kindly refer any questions regarding this matter to the undersigned.

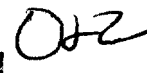
Very truly yours,

  
E. Ashton Johnston

Enclosure

95029.1

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Mr. William F. Caton

May 1, 1997

Page 2

cc: Mark Bollinger  
Jerome A. Fowlkes  
Kathleen O'Brian Ham  
D'wana Speight  
Josh Rowland  
(w/o enclosure)

PRESENTATION BY

**COALITION OF INSTITUTIONAL INVESTORS**

**Fleet Equity Partners  
Media/Communications Partners  
OneLiberty Ventures  
Spectrum Equity Associates**

WT Docket No. 97-82

Amendment of Part 1 of the  
Commission's Rules --  
Competitive Bidding

April 30, 1997

## **THE COALITION MEMBERS HAVE SUBSTANTIAL EXPERIENCE IN SPECTRUM-RELATED INVESTMENTS**

- The members of the Coalition are venture capital firms or funds that have made substantial investments in and loans to enterprises engaged in telecommunications and media businesses.
- Collectively, members of the Coalition have more than \$1.75 billion under management, of which over \$1 billion is invested in, or earmarked for investments in, communications-related companies.
- Current investments span a broad cross-section of telecommunications businesses, including PCS, cellular telephone, SMR, radio paging, Wireless Communication Service, competitive local exchange service, competitive interexchange service, satellite services, internet companies, radio and television broadcasting, cable, and other new and emerging technologies.
- Members of the Coalition have invested in, or actively explored investments in, applicants in nearly every spectrum auction the Commission has conducted.

## ISSUES OF PRINCIPAL CONCERN TO THE COALITION

- (1) The current definitions of "affiliate" and "attributable investor" which apply in the auction context are overly expansive and require the inclusion for purposes of size determinations of financial resources that are not available to the applicant. This must be changed.
- (2) The "control group" rules which applied in prior auctions were needlessly complicated, and forced the adoption of cumbersome organizational structures that were not well-suited to the entrepreneurial nature of spectrum-based businesses. Simplification of these rules will serve the public interest.
- (3) Overly broad anti-collusion rules have a chilling effect on legitimate business communications that pose no threat to the integrity of the auction process. These must be relaxed.

## RELAX THE AFFILIATION AND ATTRIBUTION RULES

The Coalition recommends that the new rules:

- Exclude the revenues of an affiliate of an institutional investor from the calculation of gross revenues if the applicant and the institutional investor certify that money from the affiliate is not and will not be available to the applicant.
- The affiliation rules are particularly harsh as applied to institutional investors. Common fund managers often direct multiple funds that are devoted to distinct investments. These related funds would be deemed "affiliates" under the current rules and 100% of the revenues generated by the funds would be reportable as revenues of the applicant, whether or not the funds are available to the applicant. For example, a mature, fully-invested fund that has no money in the applicant, and no money to provide the applicant, nevertheless would have its revenue counted against the size limits of an "affiliated" fund which has an attributable investment in the applicant.
- Include the gross revenues only of controlling principals of the applicant in calculating the size of the applicant, unless the governing agreements require the non-controlling investor to invest additional funds in the applicant.
- Adopt a uniform definition of gross revenues for use in determining the size of small businesses.

## **SIMPLIFY THE TEST FOR "CONTROL" OF THE APPLICANT**

- Substitute a simple de facto and de jure control test for the complicated "control group" structures adopted for some services.
- Artificial requirements that certain participants retain pre-ordained minimum voting and equity percentages reduce flexibility.
- Business structures should be driven by market forces, not by FCC-mandated minimum voting and equity percentages.
- Irreducible minimum equity percentages reduce flexibility, as additional investments are necessary to fund a business plan.
- The prior control group rules resulted in unduly complex structures in which equity percentages and financial interests were forced to diverge.
- Makes a transition to the public markets much more difficult.

## EXISTING ANTI-COLLUSION RULES ARE UNDULY RESTRICTIVE

- Defining any 5% or greater interestholder (and their affiliates) as the "applicant" for collusion rule purposes places unduly broad restrictions on investors and individuals who have only a casual involvement in the auction process.
- The rules have a significant chilling effect on legitimate business discussions between companies that have business dealings that do not concern their respective auction applications. In the current telecommunications marketplace, there is a very real possibility that merger and acquisition discussions will be taking place between two incumbent operators who also happen to have pending spectrum auction applications that are incidental to their core business.
- The Coalition strongly supports the "safe harbor" discussed at paragraph 102 of the NPRM.
- The anti-collusion rules should distinguish the receipt of bidding information from the imparting of bidding information. Non-controlling interestholders should be able to receive bidding strategy information from multiple applicants without implicating the anti-collusion rules, provided that the common investor certifies that it has not communicated and will not communicate confidential bid information from one applicant to another.
- An investor in an applicant who has dropped out of an auction should be allowed to invest in a surviving applicant if there has been no prior communication of bids and bid strategies between the applicants. This would allow an institutional investor who cannot cause an applicant to stay in an auction, but who wishes to continue participating in the auction, to "pick a new horse".



## **THE NEW RULES SHOULD SUPERSEDE MOST EXISTING RULES**

- As a general matter, the rules adopted in this proceeding should supersede all inconsistent service-specific rules, including rules in pending proceedings.
- For each previously licensed service -- and each unauctioned service where auction rules already have been adopted -- the Commission should issue an index of any service-specific auction rules that continue in force and effect.
  - Existing Notes and Security Agreements should not be revised retroactively to the detriment of licensees.
- The Commission should make clear that it will favorably consider requests from incumbent licensees who wish to conform their business structures to the new rules.

## REDUCE THE RISK OF DEFAULTS BY INSTALLMENT PLAN RECIPIENTS

- Take a hard look at the extent to which allowing 90% financing encourages speculation.
- Reduce speculation by requiring bidders to increase their upfront payments to maintain a minimum ratio between their money on deposit and the cumulative total of their outstanding bids.
  - Whenever an applicant's deposit drops below 4% of its high bid amounts, a bidder should have 10 business days to bring its deposit up to 6% of the high bid total that triggered the supplemental payment obligation.
- Apply the same interest rate to all winners in the same auction and make their payments due at the same time, without regard to when the Commission formally grants their underlying applications.
- Defer filing comprehensive ownership formation until the long-form application. Adopt a general auction rule which incorporates the 25% attribution limit which now appears in Section 24.720(j) of the rules, and require only holders of 25% or greater interests to be listed on the Form 175, unless they are in a position of control by virtue of other arrangements (voting agreements, management structure, etc.).
- Maintain and enforce strict default penalties to reduce speculation by prospective licensees. Licensees who make down payments but default on installment payments should pay a default penalty.